

S. 882. A bill to designate the Federal building at 1314 LeMay Boulevard, Ellsworth Air Force Base, South Dakota, as the "Cartney Koch McRaven Child Development Center," and for other purposes; to the Committee on Environment and Public Works.

#### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SPECTER (for himself and Mr. INHOFE):

S. Res. 128. A resolution prohibiting the use of United States Ground Forces in Bosnia-Herzegovina; to the Committee on Foreign Relations.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON:

S. 880. A bill to enhance fairness in compensating owners of patents used by the United States; to the Committee on the Judiciary.

##### LEGISLATION ENHANCING FAIRNESS IN THE COMPENSATION OF PATENT OWNERS

Mrs. HUTCHISON. Mr. President, I am introducing a bill today to provide fairness to our Nation's inventors. As the law is now written, inventors whose patents are taken for use by the Federal Government have only one recourse to obtain compensation—they are compelled by statute to bring a lawsuit against the Government. Under court interpretations, they are forced to bear all costs of the lawsuit, even when they win their case. This bill would permit patent holders whose claims are upheld to be reimbursed, as well, for their reasonable costs.

In 1982, when the U.S. Claims Court was created, the Congress made significant improvements in the existing law concerning claims against the Government. It did not, however, give consideration to the fairness of the existing statutes that require payment of compensation to persons whose patent rights are taken for national defense or other purposes. The Congress simply carried over the existing provisions of section 1498(a) of title 28, requiring "reasonable and entire compensation" for the taking of patent rights. Those provisions—fair on the surface—dated from the time of World War I. In the years since World War I, however, the statutory language has been applied by the courts in a manner that produces a serious inequity.

The problem arises most frequently in cases involving an inventor whose rights have been infringed by a defense contractor. In such a case, the statute provides that the inventor's only remedy is an action in the U.S. Claims Court against the Government—the beneficiary of the defense contractor's infringement—on the theory that, indirectly, the Government has taken the patent rights for public use.

The Government is authorized to take private property, for the benefit of the public, under the power of "emi-

nent domain." It may do so, however, only upon paying the "just compensation" required by the fifth amendment to the Constitution. The principle applies to the taking of intellectual property—like patents—as well as tangible property. Statutory application of this principle to the taking of patent rights is found in the part of section 1498(a) of Title 28 that provides:

Whenever an invention . . . covered by a patent . . . is used . . . by . . . the United States without a license of the owner . . . the owner's remedy shall be by action against the United States in the United States Claims Court for the recovery of his reasonable and entire compensation for such use. . . .

It might logically be supposed that the constitutional requirements of "just compensation" and the statutory requirements of "reasonable and entire compensation" would assure that an inventor will not suffer a loss when the Government takes his invention for public use. Unfortunately, logic and practice do not always keep pace with one another. The inventor does suffer loss—the costs of his lawsuit—and that loss can be significant.

The current situation may be summarized as follows: In order to obtain any compensation at all under section 1498, an inventor must initiate a lawsuit against the Government. After succeeding in such a suit, he becomes entitled to receive "reasonable and entire compensation." But the inventor then finds that, under current court interpretations, he cannot recover any of the expenses, including the witnesses' travel costs and reasonable attorneys' fees, that he incurred as a result of having to pursue the civil action. The expenses are, in effect, deducted from that sum established to be fair compensation. In short, Government requires the victim of its taking to sue to recover his losses, forces him personally to bear all his costs in undertaking the suit, and leaves him with compensation that represents less than the true value of the property taken. This result is less than "just" and certainly is less than "reasonable and entire."

The courts have generally taken the position that if Congress had intended to include reimbursement of reasonable costs and attorneys' fees within the term "reasonable and entire compensation" it should have said so specifically.

That is what this bill does—it says so specifically. It would authorize expressly the recovery of reasonable costs by an inventor who is forced by statute to litigate against the Government in order to obtain compensation. It would permit the inventor to recover all his reasonable costs—including witnesses' fees and travel costs, attorneys' fees, charges by accountants and other experts, costs of employee time in reviewing records and otherwise preparing for the suit, court costs, and all related expenditures incurred as a result of bringing the lawsuit. The costs

in each case would be scrutinized by the Claims Courts to assure that they were reasonable, of course, but to the extent they were reasonable they could be recovered.

This problem should have been corrected long ago—when it first became apparent that court interpretations would not permit inventors to obtain a complete recovery. To continue this inequity would be a serious disservice to some of our most productive inventors, and to some of our best companies in important industries. We need to be fair with those inventors and companies in order to encourage innovation and make our country more competitive. This bill would help assure the necessary fairness.

By Mr. PRYOR (for himself and Mr. GRASSLEY):

S. 881. A bill to amend the Internal Revenue Code of 1986 to clarify provisions relating to church pension benefit plans, to modify certain provisions relating to participants in such plans, to reduce the complexity of and to bring workable consistency to the applicable rules, to promote retirement savings and benefits, and for other purposes; to the Committee on Finance.

##### CHURCH RETIREMENT BENEFITS SIMPLIFICATION ACT

Mr. PRYOR. Mr. President, I am pleased to introduce today the Church Retirement Benefits Simplification Act of 1995, legislation which I also introduced and held hearings on in the 101st, 102d, and 103d Congresses. This act provides much needed clarification of the rules that apply to church retirement and welfare benefit plans and brings consistency to those rules. In addition, the act resolves significant problems churches face in administering their retirement and welfare benefit programs under current law.

In developing this important legislation, we have worked closely with leaders of the pension boards of 30 mainline Protestant and Jewish denominations and a Catholic religious order. The employee benefit programs of these mainline denominations and order are among the oldest programs in our country. Several date from the 1700's, and their median age is in excess of 50 years. These programs provide retirement and welfare benefits for several hundred thousand clergy and lay workers employed by thousands of churches and church ministry organizations serving the spiritual needs of literally millions of members.

Church retirement benefits programs began in recognition of a denomination's mission to care for its church workers in their advanced years. Several church retirement and welfare benefit programs were initially formed to provide relief and benefits for retired, disabled, or impoverished ministers and families as particular cases of need were identified. As time passed, church denomination began to provide for the retirement needs of their ministers and lay workers on a current and